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In the Supreme Court of the United States
OCTOBER TERM, 1984

CITY OF CLEBURNE, TEXAS, ET AL.,
Petitioners,

v.

CLEBURNE LIVING CENTER, INC., ET AL.,
Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

AMICUS CURIAE BRIEF OF THE STATE OF CONNECTICUT, JOINED BY THE STATES OF ARKANSAS, CALIFORNIA, COLORADO, ILLINOIS, LOUISIANA, NORTH DAKOTA, RHODE ISLAND, TENNESSEE and WEST VIRGINIA IN SUPPORT OF THE RESPONDENTS

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INTEREST OF AMICI

Amici States, pursuant to Supreme Court Rule 36, write to emphasize

their concern that mentally retarded persons not be invidiously and arbitrarily excluded from community residence by discriminatory zoning policy. Mentally retarded people have frequently been subject to brutal degradation. Unfortunately, state agencies have been part of this degradation in two interrelated ways: by adopting official policies excluding mentally retarded people from community life (keeping retarded children out of public schools and retarded adults out of residential neigborhoods); and by maintaining large, geographically remote state institutions as the exclusive residence for all such people. In many of these remote institutions, lifelong custodial confinement was sometimes the best that retarded people could hope for.

In recent years American society generally has acknowledged that historic injustices were inflicted on mentally retarded people. Most states have committed themselves to reform. Ending the total exclusion of retarded people from ordinary community life is an essential step in that remedial process. To this end, states have adopted legislation prohibiting zoning that excludes group homes for the mentally retarded. 1/

1/ Thirty-one States presently have statutes barring exclusionary zoning. See e.g.; Cal. Health & Saf. Code §§ 1566 et seq.; Conn. Gen. Stat. § 8-3e; Oliver v. Zoning Commission of the Town of Chester, 31 Conn. Supp. 197, 201, 326 A.2d 841, 843 (Middlesex County, Court of Com. Pl., 1974) ("issue presented is of immediate and great importance to the State....The expanding program of rehabilitating our mentally retarded through community residence may face similar zoning hurdles in other areas");

Footnote 1 continued on next page.

But the prohibition of such zoning should not rest on legislative discretion. Accordingly Amici States contend that exclusionary zoning which is directed against mentally retarded people as such should be prohibited as a matter of constitutional principle.

The effect of such a decision would be to strengthen the efforts of the Amici to insure proper treatment of a severly disadvantaged class in our society. If the Court of Appeals is affirmed, the States will have the latitude they need to place mentally retarded individuals in whatever

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Footnote 1 continued:

N.D.C.C. § 25-16-14(2); R.I. Gen. Laws Tit. 45, chap. 24 § 22.

See also comment, "Can the Mentally Retarded Enjoy 'yards that are wide,'" 28 Wayne L.R. 1349 (1982).

residential settings that are necessary for their greatest development and integration into society.

SUMMARY OF ARGUMENT

This Court has developed a continuum of standards of review of challenged legislative classifications under the Equal Protection Clause. For minority groups that have been traditionally discriminated against, that lack political influence, and that face "recurring constitutional difficulties." Plyler v. Doe, 457 U.S. 202, 217 (1982), this Court has applied a "heightened" standard which is less demanding than the most rigid review, but requires a showing that a classification is substantially related to the achievement of an important purpose.

Mentally retarded individuals should be considered a quasi-suspect class. They have been subjected to historical prejudice and political exclusions because of a condition that is immutable. Exclusionary zoning practices affect the mentally retarded with special severity. Mentally retarded citizens occupying a group home are similarly situated to the non-retarded living in group arrangements. No principled distinction may be made between one group or the other.

Under the heightened scrutiny standard, petitioner cannot justify its zoning ordinance on any ground, either on its face or as applied by the city council.

But, even assuming a "rational basis" review to be applicable here, the

ordinance fails. There has been no valid, "articulated" legislative purpose for the exclusion, only post hoc justification.

I.

THE ZONING ORDINANCE VIOLATES THE EQUAL PROTECTION CLAUSE WHEN MEASURED BY THE APPROPRIATE HEIGHTENED STANDARD OF SCRUTINY.

Amici contend that the zoning ordinance of petitioner violates the rights of mentally retarded citizens, when measured under a "heightened" or "extremely sensitive" standard of review. We first discuss this "intermediate" standard, then find the mentally retarded properly eligible for this classification, and finally demonstrate the unconstitutionality of the challenged ordinance.

A. The Intermediate Standard

The Equal Protection Clause does not call for the application of a "rational basis" test in all instances. [2/] A continuum of standards for review exists. The strictest scrutiny is applied to "suspect classes." Plyler v. Doe, 457 U.S. 202, 216 (1982). The prime example of a suspect class is one based upon race. See Loving v. Virginia, 388 U.S.1 (1967) (anti-inter-racial marriage statute subjected to the "most rigid scrutiny.") However, as the determining opinion observed in Regents of University of California v. Bakke, 438 U.S. 265, 290 (1978), new types of classifications may be added to the

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2/ We discuss the invalidity of the present ordinance even under this "more deferential" standard infra, at 34.

"list of 'suspect' categories." Justice Powell, writing in San Antonio Ind. School Dist. v. Rodriquez, 411 U.S. 1, 28 (1973), set forth the well-recognized requisites for finding a "suspect class". This class is one "[s]addled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." See also United States v. Carolene Products, Inc., 304 U.S. 144, 152-53, n.4 (1938) (prejudice against "discrete and insular minorities may be a special condition" calling for severe scrutiny); Weber v. Aetna Casualty & Surety Co., 406 U.S. 169 (1972) (illegitimacy as an unalterable, stigmatizing trait).

In Plyler v. Doe, supra, at n.14, this Court concluded:

> The experience of our Nation has shown that prejudice may manifest itself in the treatment of some groups. Our response to that experience is reflected in the Equal Protection Clause of the Fourteenth Amendment. Legislation imposing special disabilities upon groups disfavored by virtue of circumstances beyond their control suggests the kind of 'class or caste' treatment that the Fourteenth Amendment was designed to abolish.

Id., at 217.

In addition, certain groups "bear enough resemblance to such minorities [described above] to warrant more than casual judicial response when they are injured by law." Tribe, American Constitutional Law at 1C90. This "intermediate" scrutiny test was described in Plyler as follows:

> [W]e have recognized that certain forms of legislative classification, while not facially invidious, nonetheless give rise to recurring constitutional difficulties; in these limited circumstances we have sought the assurance that the classification reflects a reasoned judgment consistent with the ideal of equal protection by inquiring whether it may fairly be viewed as furthering a substantial interest of the State.

457 U.S. at 217.

In Plyler, this standard was applied to strike down statutes barring free public education for children of illegal aliens, whom the opinion termed "special members of [an] underclass." As Justice Powell stated in his concurrence:

> [These children] are excluded [from public school] only because of a status resulting from the violation by parents or guardians of our immigration laws and the fact that they remain in our country unlawfully. The

> respondent children are innocent in this respect.... Our review in a case such as this is properly heightened.

Id., at 238.

This test is also appropriate to evaluate classifications based upon gender. See Reed v. Reed, 404 U.S. 71 (1971); Frontiero v. Richardson, 411 U.S. 677 (1973); Kirchberg v. Feenstra, 450 U.S. 455 (1981). In his concurring opinion in Craig v. Boren, 429 U.S. 190, 210 n* (1976), Justice Powell recognizes "that the relatively deferential 'rational basis' standard of review normally applied takes on a sharper focus when we address a gender-based classification." The Court in Craig demanded that the gender-based distinction be "substantially related" to achievement of its object. Id., at 197. (Emphasis added).

A similar level of review has been applied to legislation involving illegitimate children. Levy v. Louisiana, 391 U.S. 68 (1968) ("extremely sensitive" when evaluating state statute); Mathews v. Lucas, 427 U.S. 495 (1976) (scrutiny is "not a toothless one"); Trimble v. Gordon, 430 U.S. 762 (1977); Mills v. Habluetzel, 456 U.S. 91, 97 (1982) ("restrictions will survive equal protection scrutiny to the extent they are substantially related to a legitimate state interest."). While upholding a New York law requiring specific proof of paternity before an illegitimate child can inherit from his father, the Court declared that "[a]lthough...classifications based on illegitimacy are not subject to 'strict scrutiny,' they nevertheless are invalid under the

Fourteenth Amendment if they are not substantially related to a permissible state interest." Lalli v. Lalli, 439 U.S. 259, 265 (1978).

Amici submit that it is this intermediate standard that should control in the present case.

B. The Mentally Retarded may be viewed as a quasi-suspect class, especially when exclusionary zoning ordinances are at issue.

The Court of Appeals in this case correctly designates three factors which indicate that mentally retarded people are in a quasi-suspect class -- historical prejudice, political powerlessness, and the immutability of the trait for which they have been penalized. 726 F.2d at 198.

Turning to the history of the treatment of retarded, it has been found as a fact by the trial court that "[p]ersons who are mentally retarded

historically have been subjected to exclusion from the political process and have been isolated in remote, stigmatizing living arrangements." (District Court Finding #32). The traditional attitude affected this Court in Buck v. Bell, 274 U.S. 200 (1927), relying on the views of the Eugenic Society to approve sterilization of a mentally retarded person. 3/

3/ Also with regard to the treatment of retarded persons, cf. Fowler v. United States, 633 F.2d 1258, 1260 (8th Cir. 1980):

> Until the early 1960's, federal employment opportunities for the mentally retarded were extremely limited, owing, as noted in the government's brief, to 'factors such as examinations required for positions in the Competitive Service, lack of understanding of the retarded person's ability to perform in a competitive work setting, and prejudice.'

Footnote 3 continued on next page.

One of the consequences of the isolation of the retarded is their residual political powerlessness, which has led some courts to regard them as a "discrete and insular" minority. As the

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Footnote 3 continued:

A recent study concludes:

> The history of the mentally retarded in America is a story of a hidden community, a group of persons, mostly children, traditionally viewed with pity, scorn, and contempt, who have been organized and contained on the periphery of society. They have represented an underclass of forgotten people.

Tyor & Bell, Caring for the Retarded in America (1984) at ix. See also Halpern, "Introduction", 31 Stan. L. Rev. 545 (1979).

Contrary to the contentions of the Solicitor General at page 7 of his brief Rodriquez emphasizes the history of treatment of the group, not its present status, in determining "suspectness."

court observed in Romeo v. Youngberg, 644 F.2d 147, 163, n. 35 (3d Cir. 1980), vacated on other grounds, 457 U.S. 307 (1982): "The mentally retarded may well be a paradigmatic example of a discrete and insular minority for whom the judiciary should exercise special solicitude.... The retarded cannot vote in most states and, with few community ties, sponsors or friends, have minimal impact on the political process." See also Ass'n for Retarded Citizens v. Olson, 561 F.Supp. 473 (D.N.D. 1982) (intermediate scrutiny appropriate in light of lingering discrimination); Fialkowski v. Shapp, 405 F.Supp. 946, 958, 959 (E.D.Pa. 1975) (finding a suspect class warranting "greater judicial scrutiny than that applied in

Rodriquez."). 4/

The evidence in this case clearly demonstrates that the mentally retarded's condition is "not a curable condition." 726 F.2d at 198. As Respondent's expert testified:

4/ That some remedial legislation has been adopted ameliorating the condition of the retarded, or that a few advocacy groups have aggressively protected the rights of the retarded, does not establish that the retarded are not politically powerless, as petitioners urge. Certainly Congress' passage of Title VII did not give this Court pause when it established the standard for review for legislation resting on gender discrimination. See Frontiero, 411 U.S. at 686. Nor has legislation favoring blacks, e.g., the 1964, 1965, or 1968 Civil Rights Acts, led this Court to withhold strict scrutiny review of state legislation concerning this group. Palmori v. Sidoti, ____U.S.____, 104 S.Ct. 1879 (1984).

> Mental retardation is a problem of a deficit in intellectual development and social adaptation. Its onset is sometimes from birth or during childhood. It is primarily an educational type of problem. And, traditionally, it is irreversible. By which I mean there may be some amelioration, but to date it is not a curable condition.

J.A. at 38. 5/

5/ Amici emphasize that the mentally ill are different in this regard from the retarded, although one court has used the Plyler rationale to find the denial of a zoning permit for a mentally ill group home unconstitutional. See J.W. v. City of Tacoma, 720 F.2d 1126 (9th Cir. 1983). Accordingly, this Court need not address itself to the proper standards of review for zoning exclusions based on mental illness alone.

This Court should also note a typographical error in the opinion of the 5th Circuit. In note 11 one sentence should read: "Mental retardation is not an emotional disorder but a learning problem; it arguably invokes fewer safety concerns than does mental illness."

The mentally retarded are thus subject to the same "stereotyping" condemned by this court in Mississippi University for Women v. Hogan, 458 U.S. 718 (1982) (man excluded from women's nursing school), and the same equal protection test should apply here -- a showing that the legislation is substantially related to achievement of the sought-after objective.

While exclusionary zoning laws must be invalidated on the basis of this test, it would not nullify other state policies appropriately differentiating retarded from non-retarded people. Indeed we agree with the judges dissenting from the denial of hearing en banc, 735 F.2d 832, 834, that there are "myriad of areas in which governmental practices may distinguish the retarded

and the non-retarded." [6/] Differentiation of retarded people for purposes of providing special, beneficial educational programs are surely justifiable. See Bakke, supra.

6/ This principle is further found in 29 U.S.C. § 794:

> No otherwise qualified handicapped individual in the United States, as defined in section 706(7) of this title, shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. (Emphasis added).

Similarly, provision of special institutional residences for retarded people can be justified where there is a demonstrated professional basis for concluding that such residence is not harmful and can be beneficial. The constitutional due process guarantee requires this conclusion, as this Court has held in Youngberg v. Romeo, supra; [7/] and the same conclusion

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7/ Contrary to the argument in the amicus brief submitted by the State of Pennsylvania, this Court did not decide, even implicitly, in Romeo that state laws imposing restrictions on retarded people would be subjected only to "minimal scrutiny." This Court held in Romeo that states were not free merely to provide custodial confinement -- that is, only "food, shelter, clothing and medical care." 457 U.S. at 315. The Court held that states were also constitutionally required to provide "some minimally adequate or reasonable training" for the benefit of institutionalized retarded people. Id., at 319. The Court was concerned that this constitutional mandate should not

Footnote 6 continued on next page.

follows from the equal protection analysis recognizing retardation as a quasi-suspect classification. This recognition would not, moreover, invalidate exclusion of retarded people from state universities or civil service merit employment, because it is not

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Footnote 6 continued

"restrict unnecessarily the exercise of professional judgment" through judicial prescription of the precise content of such required training programs, and it accordingly "emphasize[d] that courts must show deference to [professional] judgment." Id., at 322. If, however, the Court in Romeo had been applying the analytic equivalent of "minimal scrutiny" to the state's policy, it would have accepted Pennsylvania's basic argument that no special training programs whatsoever were constitutionally required. The Court rejected this argument and thereby imposed a higher standard than "minimal scrutiny" to protect the interests of retarded people against state actions.

directed against retarded people as such but applies to all people measured on the basis of general achievement or intelligence. Such exclusions, therefore, are not based on invidious stereotyping aimed at a historically vulnerable group as such. The fact that retarded people are excluded is merely an incidental or unintended aspect of the application of a generally neutral state policy. See Washington v. Davis, 426 U.S. 229 (1976). 8/

On the other hand, zoning regulations explicity excluding retarded people are a purposeful, invidious state

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8/ For this same reason, as Justice Brennan suggested in dicta in Frontiero, state classifications based generally on "intelligence" are not suspect since they are not directed at a vulnerable stereotyped group as such.

discrimination and cannot be constitutionally justified. As Judge Goldberg aptly stated in describing the fundamental issue of living conditions for the retarded:

> We note that heightened scrutiny is particularly appropriate in the case at bar, because the Cleburne ordinance as applied withholds a benefit which, though not fundamental, is very important to the mentally retarded....[T]he exclusion of group homes from Cleburne operates to prevent mentally retarded persons from assimilating into and contributing to their society. The trial court found that [g]roup homes currently are the principal community living alternatives for persons who are mentally retarded. The availability of such a home in a community is an essential ingredient of normal living patterns for persons who are mentally retarded, and each factor that makes such group homes

> harder to establish operates to exclude persons who are mentally retarded from the community. Cleburne, supra, at 9, Finding 30. Isolated from normal community patterns, they can never hope to adapt. The resulting awkwardness of retarded persons as well as the fact of state-sanctioned isolation further stigmatize the group and provide additional barriers to their hope for self-improvement.

Id., at 199.

Petitioners' claim at 29-32 of their brief that the retarded in group homes cannot hold employment, care for themselves, conform to societal standards or cope with emergencies is contrary to the evidence developed at the District Court, [9/] and evidence

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9/ Experience has shown that these allegations are unfounded. See O'Connor, Home is a Good Place: A national perspective of community residential facilities for

Footnote 9 continued on next page.

Footnote 9 continued.

developmentally disabled persons (1976) at 24:

> One-third of the CRFs studied were reported to have faced oppostion by members of the community at the time of their establishment. Most of the opposition was mounted by neighbors (83%). Occasionally, businessmen, city or county officials, or other community leaders (11%) created opposition without concurrent opposition by neighbors. Respondents also reported that the situation had changed since the establishment of the facility; almost all (89%) reported that the opposition had definitely decreased. The reasons for this decrease in opposition were reported to be primarily the behavior of the residents in the community and/or the efforts of the facility managers (81% and 48% respectively with a 39% overlap of the two reasons).

in and of itself of the archaic view of mental retardation. The only evidence of improper behavior adduced at trial was an incident from a Keene, Texas, group home where mail was taken briefly from a mailbox by a resident and later returned. J. A. at 36.

The District Court found that the residents of the group home in Cleburne would be self-sufficient with staff assistance and hold employment in the community. J.A. 93. Respondents' expert, referring to the retarded in general, testified that "[m]ost of these people live in communities with the rest of us, and in point of fact, most become invisible after they leave school." J. A. at 39. Thus the mentally retarded in the group home setting have not been

shown to differ from non-retarded in similar housing conditions. 10/ That is one reason why zoning discrimination is especially proper for "heightened" scrutiny.

The State may not be required to take positive steps to insure that all mentally retarded people will live in the community. See Society for Good Will to Retarded Children v. Cuomo, 737 F.2d 1239, 1249 (2d Cir. 1984) (there is "no constitutional right to community placement.") But this does not mean that the State is constitutionally permitted to prohibit all retarded people from residence in the community.

10/ The retarded certainly do not differ from non-retarded who are handicapped because of automobile accidents or other catastrophic events. Such non-retarded, handicapped people require assistance in almost every aspect of daily living.

C. The Zoning Ordinance Discriminates, using the "heightened" standard of review.

The Cleburne zoning ordinance allows a district zoned R-3 to contain multiple dwellings, boarding houses, fraternity and sorority houses, nursing homes, and private clubs. Hospitals for "the insane or feeble minded, or alcoholic or drug addicts, or penal or correctional institutions" are permitted only upon issuance of a special permit by the City Council. The permit is effective for one year.

The District Court here found that "[i]f the potential residents of the Featherston Street home were not mentally retarded, but the home was the same in all other respects, its use

would be permitted under the city's zoning ordinance." Finding 24. In its opinion the District Court further concluded that "[t]here can be little doubt that Cleburne's zoning ordinance selectively discriminates against the... 'feeble minded'." 11/

We agree with the Fifth Circuit that each of the justifications advanced for this discrimination by petitioners fails to demonstrate "a sufficiently close correspondence between the goal and the ordinance's means of achieving it." 726 F.2d 200, 201. The Fifth Circuit correctly rejects the city's claims of population concentration and

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11/ The District Court sanctioned this discrimination under the "rational basis" standard of the Equal Protection Clause. Amici believe that this discrimination cannot be justified under any standard.

traffic congestion. How the serenity of the neighborhood would be furthered by the ordinance when fraternity and sorority houses and homes for delinquent children may be established in the zone is unexplained. Nor, we venture, could it be rationally explained. Furthermore, concerns of safety and health may be protected by the "extensive regulations and guidelines" established by state and federal law, see Finding 20, District Court, rather than by the over-inclusive ordinance here.

The one-year limit on the special use permit is also discriminatory and prejudicial. Development of group homes, as in this case, are often undertaken through the private market. There is a powerful disincentive to investment where permits must be renewed annually. This zoning law will,

therefore, almost surely bar any access to the community by the mentally retarded. As such, it is identical to the ordinance struck down in Hunter v. Erickson, 393 U.S. 385 (1969), which gave a veto to the citizenry regarding open housing, and thereby discriminated against racial minorities. Like the zoning ordinance in Moore v. City of East Cleveland, 431 U.S. 494 (1977), the ordinance here is a "senseless and arbitrary restriction" on a protected class. (Brennan, J., at 506). 12/

12/ Amici concur with the 5th Circuit's "as applied" analysis, 726 F.2d at 202. The reasons for the city council's decision turning down the special permit were speculative and unsupported. The fact that thirty mentally retarded students attend a public school located across the street diminishes any claim that thirteen retarded adults need to be protected from students at the school. The home is projected for thirteen residents, not the usual six. In any event, the Respondent Association is taking steps to make sure space is adequate.

II.

THE ZONING ORDINANCE IS INVALID EVEN UNDER THE MORE DEFERENTIAL LEVEL OF SCRUTINY.

Without a "suspect class", the standards of review under the Equal Protection Clause recognize "substantial latitude to establish classifications that roughly approximate the nature of the problem perceived, that accommodate competing concerns both public and private, and that account for limitations on the practical ability of the State to remedy every ill." Plyler, supra, at 216.

This discretion is not without limits, however. The standard is not difficult to meet when the governmental body acts in good faith and sensibly. Yet, it is not a "toothless" test. Logan v. Zimmerman Brush Co., 455 U.S.

422, 438 (1982) (Justice Blackmun's separate opinion). The "challenged distinction" must rationally further "some legitimate, articulated state purpose." McGinnis v. Royster, 410 U.S. 263, 270 (1973). See also F. S. Royster Guano Co. v. Virginia, 253 U.S. 412, 415 (1920): "The classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike."

Petitioner claims to be regulating a business venture under its zoning code. But it is only necessary to compare the permitted uses with the non-permitted uses to see the plain irrationality of the ordinance. Public and private schools and colleges, along

with their dormitories, fraternity and sorority houses and sport stadiums are permitted. Private clubs and fraternal orders are permitted, without any restrictions on liquor consumption. Tenements, row houses, and apartment houses and hotels without limits on the number of families living in them are permitted as are boarding and lodging houses. Philanthropic homes for people such as unwed mothers or delinquent youth or paroled felons are permitted. Hospitals for the aged are permitted, and without limitation on number. On the other hand, thirteen mentally retarded citizens may not establish residence in this zone. No purpose at all has been stated for such discriminatory treatment of a class; nor could one be that is not based on invidious grounds.

Normally, zoning ordinances would receive deferential treatment. See Village of Belle Terre v. Boraas, 416 U.S. 1 (1974); Macon Ass'n for Retarded Citizens v. Macon Bibb County Planning and Zoning Commission, 252 Ga. 484, 314 S.E.2d 218 (1984), appeal dismissed, 105 S.Ct. 57 (1984). In Macon, all multi-family living arrangements were excluded from the zone, not merely mentally retarded people. In this case, however, the city zoning ordinance authority excludes group homes, but not other similar uses. This process is not a unitary one where all similar groups are subjected to the same treatment. See McQuillin, The Law of Municipal Corporations, § 25.123: "The classification cannot prohibit or restrict certain uses

and permit other uses where there is no valid basis, reasonably related to the public health, safety, morals, welfare or other proper object of the police power, for distinguishing between them."

The petitioner here has not satisfied even the minimum standard under the Equal Protection Clause. The ordinance should be declared void. 13/ See Fowler v. United States, 633 F.2d (8th Cir. 1980) holding that a mentally retarded worker was discriminated against in his firing under a "rational basis" standard of equal protection.

13/ This Court need not remand to the Court of Appeals, as the Solicitor General suggests, to find the ordinance invalid. On this record, this Court clearly may do so now. Capital Cities Cable, Inc. v. Crisp, ____U.S.____, 104 S.Ct. 2694, 2699 (1984).

CONCLUSION

For the above-stated reasons, the judgment of the Fifth Circuit declaring the zoning ordinance unconstitutional should be affirmed.

RESPECTFULLY SUBMITTED,

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